

TABLE OF CONTENTS

	PAGE
<i>Preface to the First Edition</i>	v
<i>Preface to the Third Edition</i>	vii
<i>Table of Cases</i>	xvii
<i>Table of Statutes</i>	xxxvii
<i>Table of Statutory Instruments</i>	xli
<i>Table of Civil Procedure Rules</i>	xliii

PARA

1. Historical Introduction

Early Origins	1-001
<i>Prince Albert v Strange</i>	1-019
The century after <i>Prince Albert v Strange</i>	1-025
<i>Saltman</i>	1-046
<i>Saltman</i> to the Human Rights Act 1998	1-051
Public sector confidentiality	1-052
Covert and intrusive ways of obtaining information.....	1-053
Human Rights Act and personal privacy.....	1-055

2. Foundations

Different species of action	2-001
Relationships giving rise to a duty of confidentiality.....	2-018
Information obtained by dishonest or discreditable means	2-019
Information obtained by accident.....	2-020
Article 8 cases	2-021
Conflicting views on information as property	2-025
Conflicting views on damages	2-062
Equitable compensation.....	2-078
New Zealand, Canada and Australia	2-085
Conclusion	2-099

3. Essential Features of Confidentiality

General Principles	3-001
Contract.....	3-002
Circumstances Importing an Obligation of Confidentiality	
Information imparted in the course of a relationship or venture	
which a reasonable person would regard as involving a duty	
of confidentiality.....	3-008

CONTENTS

Information received for a limited purpose in the exercise of a legal power or furtherance of a legal duty	3-012
Information obtained by improper or surreptitious means	3-030
The principle in <i>Ashburton v Pape</i>	3-031
Obtaining confidential information through trespass	3-035
Extension of <i>Ashburton v Pape</i> to mistake	3-045
Information received directly or indirectly from another person under a duty of confidentiality	
Information properly disclosed	3-052
Information improperly disclosed	3-053
Innocent recipient with subsequent knowledge of improper disclosure	3-054
“Bona fide purchase” and change of position	3-056
Notice of confidentiality	3-065
Direct relationship between confider and confidant	3-066
Third party recipient	3-068
Accidental recipient	3-076
Improper or surreptitious receipt	3-077
Confidential nature of the information	3-078
Confidentiality and reasonableness	3-082
Necessity of identification of information claimed to be confidential	3-086
Trivial or useless information	3-089
Falsity of information	3-093
Intention to publish	3-099
Public domain	3-108
Hilton v Barker Booth & Eastwood	3-134
Public record	3-137
Conclusion on public record	3-153
Misuse	3-154
Misuse and negligence	3-158
Misuse and detriment	3-162
Qualifications to a duty of confidentiality	3-168
Express or implied consent	3-169
Disclosure required by law	3-170
Duty to the public	3-172
Disclosure required in the interests of the confidant	3-173
Who may sue?	3-182
 4. Duration of Confidentiality	
General principle	4-001
Loss of secrecy	4-002
<i>Terrapin</i> and the springboard theory	4-004
The <i>Mustad</i> and <i>Terrapin</i> debate	4-006
<i>Spycatcher</i>	4-012
Injunction to prevent profit from past misconduct?	4-020
Conclusions on springboard	4-024
Passage of time and change of circumstances	4-028

CONTENTS

Continuing contractual obligations.....	4-035
Effect of a repudiatory breach of contract	4-036
5. Public Sector Confidentiality	5-001
6. Public Interest.....	6-001
The defence of iniquity.....	6-003
The contractual analysis.....	6-010
Serious harm to the public.....	6-015
<i>Spycatcher</i>	6-020
Application of the limiting principle.....	6-024
Article 10	6-048
New Zealand	6-060
Australia	6-061
Conclusions on public interest.....	6-070
Clean hands	6-076
7. Confidentiality and Privacy	7-001
Historical background: case law.....	7-004
Historical background: proposals for reform	7-012
Human Rights Act 1998	7-017
The concept of private life in Article 8.....	7-029
Respect for private life and justifiability of interference.....	7-033
Serious interference and the ordinary incidents of social living.....	7-034
Justification for interference	7-045
Disclosure by or to someone with a personal interest in the disclosure being made.....	7-047
Public interest.....	7-049
Public domain.....	7-057
The ultimate balancing exercise	7-062
Privacy and commercialism	7-065
Privacy and companies.....	7-073
8. Data Protection and Freedom of Information	
The DPA and the FOIA: Introduction	
Data Protection	8-001
Freedom of information	8-004
The Information Commissioner	8-007
The DPA	8-010
Processing.....	8-011
Data	8-012
Personal data	8-015
Sensitive personal data.....	8-017
The data protection principles.....	8-018
Data subject rights.....	8-020
Exemptions.....	8-021
Public interest.....	8-024

CONTENTS

Offences.....	8-026
The FOIA.....	8-027
The DPA and the FOIA in confidentiality cases.....	8-032
9. Remedies	
Injunction	9-001
The problem of the unidentified defendant.....	9-007
Superinjunctions and anonymity	9-010
Destruction or delivery up.....	9-013
Account of profits.....	9-018
Constructive trust.....	9-022
Damages.....	9-037
Declaration.....	9-053
Search order.....	9-054
Action for discovery	9-058
Delay.....	9-060
10. Confidentiality and Foreign Law	10-001
Cases where English courts are asked to order production of confidential documents outside the jurisdiction	10-004
Cases where foreign courts have ordered production of confidential documents within the United Kingdom	10-011
Assistance by English courts or regulatory authorities to foreign courts or regulatory authorities	10-018
11. Medical Advisers	11-001
Anonymisation	11-008
Diagnosis, advice and treatment	11-011
Clinical audit and regulation.....	11-018
Advancement of medicine	11-021
Protection of others	11-023
Self-protection.....	11-031
Management and record keeping.....	11-033
Disclosure required by law	11-037
Children.....	11-038
Persons lacking capacity to consent to disclosure.....	11-046
Disclosure to a relative	11-048
The dead.....	11-051
12. Bankers	
The general principle	12-001
Compulsion by law	12-013
Duty to the public	12-014
Interest of the bank	12-020
Consent.....	12-022

CONTENTS

13. Broadcasting and Journalism	13-001
Freedom to publish	13-002
Relationship between Article 10 and rights of confidentiality	13-004
Article 10 and its application to different kinds of information	13-006
Statutory restriction on grant of injunctions and relevance of privacy codes	13-010
“Privacy”	
“Clandestine devices and subterfuge”	
“The public interest”	13-012
Disclosure of sources	13-014
“Disclosure”	
“Necessary”	13-021
“The interests of justice”	13-023
The nature of the source and the information revealed	13-027
 14. Employees and Employers	 14-001
Contract	14-005
Implied obligation during employment	14-008
Implied obligation after termination	14-018
Customer lists	
Use of confidential information after termination for purposes other than use of the ex-employee’s skills	14-024
Express terms	14-027
Termination as a result of repudiatory breach	14-031
Employer’s obligation	14-032
 15. Teachers, Clergy, Counsellors and Mediators	 15-001
Teachers	15-007
Clergy	15-011
Counsellors	15-013
Mediators	
 16. Lawyers	 16-001
Continuing duty after termination of retainer	16-005
Limits of the principle in <i>Bolkiah v KPMG</i>	16-011
Legal professional privilege	16-012
Crime or fraud	16-015
Use of information in defence of the lawyer’s own interests	16-029
Disclosure required by law	16-042
Children	16-044
 17. General Principle and Exceptions	 17-001
The general principle	17-005
Exceptions	17-006
Statutory and regulatory exceptions	17-007
Common law exceptions	

CONTENTS

“Without Prejudice” Communications and Communications to Mediators and Conciliators	
“Without prejudice” communications	17-008
Statements to mediators and conciliators	17-016
Legal professional privilege and public interest immunity	17-019
18. Legal Professional Privilege and Confidence	
Origins and basis of legal professional confidence	18-001
The scope and depth of the protection afforded by privilege	18-004
Loss of privilege	18-012
<i>Calcraft v Guest</i>	18-015
Is <i>Calcraft v Guest</i> right?	18-018
<i>Ashburton v Pape</i>	18-027
Comparison of <i>Calcraft</i> and <i>Ashburton</i>	18-031
Discretion	18-034
Waiver of privilege	18-048
Conclusions	18-066
19. Public Interest Immunity	
Origins and basis	19-001
Confidentiality and public interest immunity	19-004
Class and contents claims	19-007
Effect of the Human Rights Act 1998	19-012
Reasons for immunity	19-015
Documents whose disclosure would be prejudicial to national security or foreign relations	19-017
Documents whose disclosure would expose the inner workings of government to ill-informed and captious criticism and increase the difficulties of the decision-making process	19-024
Documents whose disclosure would discourage the free flow of information communicated for official purposes	19-033
The armed forces	19-035
Child care records	19-038
Official medical records	19-040
The police	19-043
Financial regulator	19-050
Informants	19-052
Extension of the immunity of informants	19-057
Documents whose disclosure would be oppressive	19-060
The compulsion principle as a head of public interest immunity	19-062
Disclosure for an authorised purpose	19-070
The nature of the protection afforded by immunity	19-072
Raising the objection	19-082
Waiver	19-087

CONTENTS

20. Methods of Partial Protection

Restrictions on the manner in which confidential information is disclosed or further disseminated.....	20-001
Controls on the form of disclosure.....	20-002
Restrictions operating during and after hearings	20-006
The general rule.....	20-007
An exception: the court's parental jurisdiction.....	20-008
Hearings in private.....	20-010
Anonymity orders and other restrictions on publication.....	20-014
Access to court records.....	20-018
Exclusion of confidential material from judgments	20-019
Restrictions on the collateral use of information provided for the purposes of litigation.....	20-020
Third parties	20-039
The scope of CPR 31.22.....	20-049
CPR 31.22 and the effect of public hearings	20-054
Permission to use disclosed information for other purposes	20-056

21. Children

Children's rights of confidence.....	21-001
Waiver.....	21-002
The courts' jurisdiction	21-005
The best interests of the child as "a primary consideration".....	21-013
The best interests of the child as "the paramount consideration".....	21-016
Family Court Proceedings	21-017
Exclusion of the public.....	21-018
Restrictions on the disclosure of information or documents relating to proceedings.....	21-021
The Children and Young Persons Act 1933.....	21-022
The Children Act 1989	21-023
The Administration of Justice Act 1960	21-024
The Family Procedure Rules 2010.....	21-026
Restricting disclosure to the parties themselves.....	21-032

22. Arbitrations

The duty of confidence.....	22-001
The interface between arbitration and litigation	22-016
Conclusions	22-021
Qualifications/exceptions.....	22-026
Order/leave of the court	22-027
Disclosure in a party's own interests	22-028
Disclosure in the interests of justice/public interest.....	22-033
Others involved in arbitrations.....	22-035

Index	447
-------------	-----